



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,894	06/23/2003	Kathryn Gardner Zesk		7567

7590 03/07/2005  
Kathryn Zesk  
2197 Beaver Dam Road  
Cassatt, SC 29032

EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

10/601,894

Examiner

Anita M. King

Applicant(s)

ZESK, KATHRYN GARDNER

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 08 November 2004 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
  - ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
  - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☒ 3. Amendments to the drawings:
  - ☒ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
  - ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: the amendments to the claims are not proper there is no underlining to show additional limitations added to the claims and no brackets or strkethrough to show deleted limitations, see attachment for further details.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Application/Control Number: 10/601,894  
Art Unit: 3632

Page 2

This is the second office action for application number 10/601,894, Ground Anchoring Device for Floral Pots, Baskets, and Containers, filed on June 23, 2003.

### **Mini Lecture**

#### **Information to Pro Se Inventors Regarding responses to Office Actions**

#### *INTRODUCTION*

An examination of this application reveals that applicant may be unfamiliar with patent prosecuting procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed.

Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application. The value of a patent is largely dependent upon skillful preparation and prosecution. Although the services of a registered patent attorney or agent is advised, the Office cannot aid in selecting an attorney or agent. 37 C.F.R. § 1.31; M.P.E.P. § 401. However, Applicant is encouraged to peruse the publication entitled "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

#### *DISCUSSION*

The following discussion provides general information for Applicant's benefit regarding an applicant's response, new matter, the period for response, and the certificate of mailing.

##### **I. Response by Applicant**

The applicant **MUST** respond to every ground of rejection and objection made in an Office action. 37 C.F.R. § 1.111. The applicant will generally present arguments that the examiner's rejections or objections were made in error; or amend the specification, drawings,

and/or claims to overcome the rejection or objection. Amendments to the application may not introduce new matter. 37 C.F.R. § 1.118.

Unless the Office explicitly requests the return of a paper, all papers mailed to the applicant are intended to be kept by the applicant for his own records. The response must be signed by ALL applicants. 37 C.F.R. § 1.33.

#### A. Arguments

Should the applicant disagree with the examiner's position, the applicant should distinctly and specifically point out the supposed errors in the examiner's action with arguments under the heading "Remarks" in the response. 37 C.F.R. § 1.111. In addition, the applicant must discuss the references cited by the examiner that explain how the claims avoid the references or patentably distinguish from them.

#### B. Amendments to the Specification

Amendments to the specification, including the abstract, must be made by presenting a replacement paragraph or section or abstract marked up to show changes made relative to the immediate prior version. An accompanying clean version is not required and should not be presented. Newly added paragraphs or sections, including a new abstract (instead of a replacement abstract), must not be underlined. A replacement or new abstract must be submitted on a separate sheet, 37 CFR 1.72. If a substitute specification is being submitted to incorporate extensive amendments, both a clean version (which will be entered) and a marked up version must be submitted as per 37 CFR 1.125.

The changes in any replacement paragraph or section, or substitute specification must be shown by underlining (for added matter) or strikethrough (for deleted matter) with 2 exceptions: (1) for **deletion of five or fewer characters, double brackets may be used**

(e.g., ~~[[error]]~~); and (2) if strikethrough cannot be easily perceived (e.g., deletion of the number "4" or certain punctuation marks), double brackets must be used (e.g., ~~[[4]]~~).

As an alternative to using double brackets, however, extra portions of text may be included and after being deleted, all in strikethrough, followed by including and underlining the extra text with the desired change (e.g., ~~number 4~~ as number 14 as).

### C. Amendments to the Claims

Each amendment document that includes a change to an existing claim, cancellation of a claim or a submission of a new claim **must include a complete listing** of all claims in the application. After each claim number in the listing, the status must be indicated in a parenthetical expression, and **the text of each pending claim** (with markings to show current changes) must be presented. The claims in the listing will replace all prior claims in the application.

(1) The current status of the all the claims in the application, including any previously canceled, not entered or withdrawn claims, must be given in a parenthetical expression following the claim number using only one of (previously presented) and (not entered). The text of all pending claims, including withdrawn claims, must be submitted each time any claim is amended. Canceled and not entered claims must be indicated by only the claim number and status, without presenting the text of the claims.

(2) The text of all claims being currently amended must be presented in the claim listing with markings to indicate the changes that have been made relative to the immediate prior version. The changes in any amended claim must be shown by underlining (for added matter) or strikethrough (for deleted matter) with 2 exceptions: (1) for deletion of

five characters or fewer, double brackets may be used (e.g., ~~[[error]]~~); and (2) if strikethrough cannot be easily perceived (e.g., deletion of the number “4” or certain punctuation marks), double brackets must be used (e.g., ~~[[4]]~~). As an alternative to using double brackets, however, extra portions of text may be included before and after text being deleted, all in strikethrough, followed by including and underlining the extra text with the desired change (e.g., ~~number 4~~ as number 14 as). An accompanying clean version is not required and should not be presented. Only claims of the status “currently amended,” and “withdrawn” that are being amended, may include markings.

(3) The text of pending claims not being currently amended, including withdrawn claims, must be presented in the claim listing in clean version, i.e., without any markings. Any claim text presented in clean version will constitute an assertion that it has not been changed relative to the immediate prior version except to omit markings that may have been presented in the immediate prior version of the claims.

(4) A claim being canceled must be listed in the claim listing with the status identifier “canceled”; the text of the claim must not be presented. Providing an instruction to cancel is optional.

(5) Any claims added by amendment must be presented in the claim listing with the status identifier “(new)”; the text of the claim must not be underlined.

(6) All of the claims in the claim listing must be presented in ascending numerical order. Consecutive canceled, or not entered, claims may be aggregated into one statement (e.g., Claims 1-5 (canceled)).

#### D. Drawing Corrections

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks section of the amendment, **and may be accompanied by a marked-up copy of one or more of the figures being amendment, with annotations.** Any replacement drawing sheet must **be identified in the top margin as "Replacement Sheet"** and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. **Any marked-up (annotated) copy showing changes must be labeled "Annotated Sheet Showing Changes" and accompany the replacement sheet as an appendix to the amendment.** The figure or figure number of the amended drawings(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

#### II. New Matter

As previously mentioned, no amendment to the specification, claims, or drawings may introduce new matter. 37 C.F.R. § 1.118. "New matter" constitutes any material which meets the following criteria:

- (1) It is added to the disclosure (either the specification, the claims, or the drawings) after the filing date of the application, and
- (2) It contains new information which is neither included nor implied in the original version of the disclosure. This includes the addition of physical properties, new uses, etc.

Art Unit: 3632

See M.P.E.P. § 706.03(o).

### III. Period For Response

An Office action generally sets a time period in which the applicant has to respond to every rejection and objection (called a shortened statutory period). 37 C.F.R. § 1.134. This time period for response appears on the cover letter (form PTO-326) of the Office action. Usually, a 3 month shortened statutory period is set. M.P.E.P. § 710.02(b). The applicant's response must be received within the time period listed on the cover letter, or the application will be held abandoned. 37 C.F.R. § 1.135.

Currently, the Office allows the time period for response to be extended past the shortened statutory period up to a maximum of 6 months (called the maximum 6 month statutory period). In order to extend the period of response past the shortened statutory period, a request for an extension of time and payment of the appropriate fee is required. 37 C.F.R. § 1.136. The request must state that it is for "an extension of the period for response under 37 C.F.R. § 1.136(a)." The following table lists the required fees for extensions of the shortened statutory period:

Months Past Response Date	Fee Due (Small / Large Entity)
Response within Time Allowed	None / None
1	\$60/ \$120
2	\$225/ \$450
3	\$510/ \$1,020
4	\$795/ \$1,590
5	\$1,080/ \$2,160



It is important to note that no extension of time is permitted that extends the period for response past the maximum 6-month statutory period. Responses received after the maximum 6-month statutory period will be held abandoned. 37 C.F.R. § 1.135.

Three examples are provided:

Example 1:

A complete response is filed four months and one day after the mailing date of an Office action. The Office action sets a 3 month shortened statutory period for response. The response must be accompanied by a fee in the amount of \$225 (for a small entity; \$450 for a large entity) for a 2-month extension of time. The response must also contain a statement requesting "an extension of the period for response under 37 C.F.R. § 1.136(a)."

Example 2:

A complete response is filed five months and one day after the mailing date of an Office action. The Office action sets a 2 month shortened statutory period for response. The response must be accompanied by a fee in the amount of \$795 (for a small entity; \$1,590 for a large entity) for a 4-month extension of time. The response must also contain a statement requesting "an extension of the period for response under 37 C.F.R. § 1.136(a)."

Example 3:

A complete response is filed six months and one day after the mailing date of an Office action. The Office action sets a 3 month shortened statutory period for response. The response is held abandoned even if accompanied by a fee and a request for an extension of time. Remember, extensions of time may not be used to extend the period for response past the maximum 6-month statutory period. 37 C.F.R. § 1.135.

#### IV. Certificates of Mailing or Transmission

It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

##### CERTIFICATE OF MAILING

To ensure that the Applicant's response is considered timely filed, it is advisable to include a "Certificate of Mailing" on at least one page (preferably on the first page) of the response. This "Certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner of Patents and Trademarks, Washington, D.C. 20231" on (Date of Deposit).

(Typed or printed name of person signing this certificate)

(Signature)

##### CERTIFICATE OF TRANSMISSION

Alternatively, if the applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) \_\_\_\_\_ - \_\_\_\_\_ (date).

(Typed or printed name of person signing this certificate)

(Signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They MUST be signed, and the date must be the actual date on which it is mailed or transmitted. For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date of the U.S. Postal Service actually delivers the response, or the fax is

"date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission Statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

**NOTICE TO APPLICANT:** In the case of lost or late response the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or private shippers such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.

Furthermore, Applicant is encouraged to include with the response a self addressed and stamped postcard completely itemizing the papers submitted with applicant's response. See M.P.E.P. § 503. When the response is received by the Office, the postcard is date-stamped and returned to the applicant. *Id.* This is an applicant's best indication of the date the Office received the response and if all of the papers submitted have been received.

#### CONCLUSION AND CAVEAT

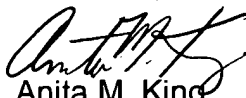
The above discussion is not intended to be an exhaustive list of all the topics that may be relevant to this particular Application. The information was provided to familiarize Applicant with the portions of a response that have historically caused problems for pro se inventors.

Furthermore, even if Applicant's response is in accordance with the information provided above, there is no guarantee that every requirement of the patent laws (35 U.S.C. §§ 1-376), patent rules (37 C.F.R. §§ 1.1-150.6), and Patent Office policy (M.P.E.P. §§ 101-2591) has been met. The adequacy of a response is determined on a case-by-case basis. See 37 C.F.R. § 1.111; M.P.E.P. § 714.02.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anita M. King  
Primary Examiner  
Art Unit 3632

March 3, 2005